RAMLY MD. YASIN & ORS.

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, ALOR SETAR
SYED AGIL BARAKBAH J
[CRIMINAL APPEAL NO. 32 OF 1979]
13 DECEMBER 1981

CRIMINAL LAW: *Prevention of corruption - Corruptly accepting gratification - Inducement to pass candidates from driving school - R.I.M.V. driving testers.*

CRIMINAL PROCEDURE: *Accomplice - Whether admission of previous bribes clothe the giver as accomplice - Driving school operator - Whether s. 18 applies - Marked notes recovered - Presumption under s. 14 - Police report - Whether corroboration under s. 157 - Evidence Act) PW12 - Giver.*

CRIMINAL PROCEDURE: *Sentence - Public interest*

The three appellants who were driving testers at the R.I.M.V., Kulim were charged for an offence under s. 4(a) of the Prevention of Corruption Act, 1961 at the Sessions Court, Kulim. They were alleged to have received a sum of RM35 each as gratification from a driving school operator PW12 on 24 June 1976 to pass two of his candidates who were taking the driving tests. They were convicted of this offence and sentenced to 3 months' imprisonment and to a fine of RM1,000 in default 3 months' imprisonment and ordered to pay RM35 each to the Government as penalty under s. 13 of the Act by the learned President on 20 May 1979. They appealed against both conviction and sentence. The learned Deputy Public Prosecutor files a cross-appeal against the inadequacy of the sentence.

Sometime in April 1976, complainants PW12 and PW13 who were operators of a driving school reported to PW1, a BSN officer, regarding allegations of corruption against some R.I.M.V. driving testers at Kulim and PW12 lodged a report (Ex P2) with the BSN. Subsequently on 23 April 1976 BSN officers (PW1 and PW2) briefed PW12, PW13 and other BSN officers to set a trap the next day at 2.30 p.m. at the Ibrahim Club, Kulim where the R.I.M.V. conducted driving tests. Marked currency notes amounting to RM105 were handed by PW1 and PW2 to PW12 in three sets of RM35 each and instructed PW12 to hand over the money to the three testers since three candidates would be taking class B and D tests on that day. While the BSN trap officers PW9, 10 and 11 were waiting at the coffee shop about 200 or 300 yards away from the club, PW13 who took position at the window of the premises between 2 and 3 p.m. saw PW12 handing over the money to the 3rd appellant who took it. He immediately rushed to the coffee shop and informed PW10 who then proceeded to the scene with some officers. PW11 searched the 1st appellant and recovered among other articles RM35 marked notes from his left shirt pocket. PW9 searched the 2nd appellant and also recovered RM35 marked notes from the left pocket of his bush jacket among other articles. PW10 searched the 3rd appellant and from his left shirt pocket he recovered a sum of RM75 among which were RM35 marked notes. All the three appellants were arrested and search lists were prepared and acknowledged by them.

PW12 testified that on the day in question prior to handing over the RM35 to each of the appellants he had offered the 1st appellant RM40/-more if the appellant would pass PW6, one of the candidates in the test, held that morning. After the appellant had agreed to the

extra payment of RM40, PW12 approached PW6 who agreed to pay and PW6 subsequently passed the test. PW12 also admitted approaching the 2nd appellant. He requested PW7 who in his evidence admitted paying RM40 to PW12 and he passed the test. The outcome of the above resulted in the second charge being preferred against each of the two appellants who were acquitted and discharged.

Counsel for the appellant argued that the learned President was wrong in failing to treat PW12 as an accomplice thereby concluding there was no necessity for any corroboration of his evidence. He also erred in concluding the police report (Ex P2) lodged by PW12 as corroboration under s. 157 of the Evidence Act. In his grounds of judgment the President said:

> PW12 had admitted in his testimony that he had bribed the RIMV testers prior to this incident. When things became difficult for him he decided to inform Biro Siasatan Negara. A person's previous record of participation in a particular sort of crime cannot in itself clothe him with the taint of an accomplice when in a subsequent transaction involving a crime of the same sort he acts throughout simply as 'agent provocateur' - (*Lionel de Silva v. R.* [1956] MLJ). The term 'accomplice includes all persons who had been concerned as principals or merely as accessories. A witness who had made himself an agent for the prosecution before the actual commission of the offence is not an accomplice - *Sathasivam & Ors. v. PP* [1949] MLJ 71. After lodging police report PW12's part in laying the trap was to hand over the marked notes to the 3 testers. Had he played a more active part in the transaction apart from the bare payment the position would have been different. I found no evidence upon which I can properly rule that PW12 was a participant in the offence.

Held:

[1] PW12's conduct went beyond that of the agent provocateur and that of mere payment and therefore his infamous conduct excludes him from the protection accorded by s. 18 of the Act. The learned President therefore had erred in concluding that PW 12 was not an accomplice and failed to warn himself of the dangers of convicting on the uncorroborated evidence of the accomplice.

[2] The discoveries of the marked notes from each of the appellants are independent corroborative evidence which led to one and only irresistable conclusion that the appellants received the money from PW12. The presumption under s. 14 of the Act that the gratification is deemed to have been given and received by the appellants corruptly as an inducement or reward, arises.

[3] The President had applied the correct principle relating to s. 157 of the Evidence Act, as to corroboration of the police report and the evidence of PW12 at the trial.

[4] Although the trial President had considered public interest and other relevant factors, he had failed to appreciate that the effect of offences of this nature whereby incompetent drivers are certified to be competent to drive on the public roads through corruption, is one of the main contributing factors to traffic accidents which have resulted in serious injuries, as a result of dangerous or negligent driving.

[5] In the circumstances, the offence must be viewed more seriously. The sentence is grossly inadequate and should be increased.

[Appeal dismissed. Fine of RM1,000 in default 3 months' imprisonment confirmed. Sentence of 3 months' imprisonment enhanced to 8 months. Order to pay RM35 to the Government as penalty confirmed.]

Cases referred to:
Chua Boon Huat v. PP [1970] 2 MLJ 29
Attan bin Abdul Ghani v. PP [1970] 2 MLJ 143
R. v. Thomas Lewis [1937] 26 Cr App R. 110
Rattan Singh v. PP [1971] 1 MLJ 162
R.v. Baskerville [1916] 2 KB 658
Mohamed Mokhtar v. PP [1972] 1 MLJ 122
Mohd. Ali v. PP [1962] MLJ 230
Ah Mee v. PP [1967] 1 MLJ 220
PP v. Yuvaraj [1969] 2 MLJ 89

Legislation referred to:
Evidence Act 1950, s. 157
Prevention of Corruption Act 1961, ss. 4(a), 13, 14, 18

For the appellants - Karpal Singh
For the respondent - DPP Mohd Khalid bin Abdul Manaf

(Digest Form Only)

Also found at [1982] CLJ 200